height, being in derogation of the fee, could not be extended by implication and an apartment building being a dwelling house was not excluded by the covenant.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF THE LAWS—REFILLING OF BOTTLES PROTECTED BY TRADE-MARK.—The defendant was prosecuted under a Florida statute forbidding the refilling of milk bottles, etc., having a registered trade mark 'blown in.' The purchaser from the owner of the trade-mark was excepted from the operation of the law. *Held,* the statute was invalid as contrary to the Florida and Federal constitutions: This inhibited refillment was an unjust and unreasonable discrimination in favor of a class of people who own a very common and ordinary kind of personal property. *Yeager* v. *State,* (Fla., 1920) 83 So. 525.

There seems to be a decided split in authority on the question of the validity of statutes similar to the one in the principal case. Following the decision of *People* v. *Cannon,* 139 N. Y. 32, the courts of Cal., Ky., Mass., and R. I., have held such statutes constitutional; while, upon the reasoning of the leading case of *Lippman* v. *People,* 175 Ill. 101, the courts of Ind., Mo., and Ohio have come to the opposite conclusion. Although the authorities are perhaps irreconcilable, yet there are certain variations in the wording of the different statutes on which the courts lay great emphasis. In two of the statutes declared invalid, bottlers of milk, cream, etc., were not included in the operation of the law. *Lippman* v. *People, supra; State* v. *Baskowitz,* 250 Mo. 82. In the latter case this exclusion was regarded as sufficient to negative the claim that the act was a proper exercise of the police power, and to distinguish the statute from that in the *Cannon case, supra.* Statutes not referring to food products, but merely to containers generally, have been held invalid as not intended primarily for the protection of the public. *Horwich* v. *Walker-Gordon Lab. Co.,* 205 Ill. 497; *State* v. *Wiggam,* (Ind., 1918) 118 N. E. 684. Statutes which have been upheld have uniformly contained an express reference to food products. *Bartolotti* v. *Police Court,* 35 Cal. App. 372; *Comm.* v. *Goldberg,* 167 Ky. 96; *Comm.* v. *Anselvitch,* 186 Mass. 376; *People* v. *Cannon, supra; People* v. *Luhrs,* 195 N. Y. 377; *State* v. *Hand Brewing Co.,* 32 R. I. 56. It was said by the court in the *Anselvitch case. supra,* at p. 378, that the statute "* * * makes provisions in reference to a kind of property used in a peculiar way, which is of such a nature as to call for peculiar provisions for the protection of the public and its owners against the fraud of evildoers." Another variation in wording is emphasized in the case of *State* v. *Schmuck,* 77 Ohio St. 438. The court, in holding invalid a 'milk bottle' statute, pointed out that in the New York statute the purchaser from the owner of the trade-mark was excepted from the penalty of the law, while the Ohio act made no such exception and so deprived the purchaser of the right of acquiring property. The statute in the principal case, (FLA. GEN. STAT. 1906, par. 3345), being identical with the New York statute in the two particulars above emphasized, the decision would hardly seem to be supported by the line of authorities cited by the court. The contention that such a statute is bad as class legislation was effectively disposed of by the court in

Comm. v. *Goldberg, supra,* the court saying, at p. 109: "* * * every act having for its purpose the prevention of fraud and the punishment of persons who commit fraud necessarily affords protection to the persons who might be defrauded except for the statute." See also note to *State* v. *Baskowitz, supra, Ann. Cas.* 1915-A, 487.

CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES—NEW YORK INCOME TAX.—The New York income tax law (Chap. 627, Laws 1919) provided for deduction at the source of salaries of non-residents in every case where the salary was more than $1,000 per annum. An exemption of $1,000 or more was allowed to every resident. A non-resident was allowed only an exemption based on the amount of income tax he paid in his own state, and then only in case such state allowed similar exemptions for residents of New York. *Held,* the act was invalid under the 'privileges and immunities' clause of the Federal Constitution. Under the known circumstances that citizens of Connecticut and New Jersey (states having no income tax laws), would be allowed no exemptions, this was an unwarranted discrimination against the citizens of those states. *Travis* v. *Yale & Towne Mfg. Co.,* (March 1, 1920) — Sup. Ct. Rep. —.

A state is given great latitude in the manner of collecting taxes from non-residents, (see *Shaffer* v.*Carter, infra*), but there must not be an unreasonable difference in the manner of assessment as between resident and non-resident. *Maxwell* v. *Bugbee,* 250 U. S. 525, (*inheritance tax*). An act giving resident creditors priority over non-resident creditors violates the 'privileges and immunities' clause. *Blake* v. *McClung,* 172 U. S. 239. So also does a statute placing a higher license tax on non-residents than on residents. *Ward* v. *Maryland,* 12 Wall. 418, 430, the court stating that one of the privileges and immunities protected is the right "* * * to be exempt from any higher taxes or excises than are imposed by the state on its own citizens." Although this question has been side-stepped by one court, (*State* v. *Frear,* 148 Wis. 456), yet the decision in the principal case would seem unassailable, once it be admitted that the inequality between residents is neither accidental nor merely occasional. *Maxwell* v. *Bugbee, supra; Amoskeag Savings Bank* v. *Purdy,* 231 U. S. 373.

CONSTITUTIONAL LAW—STATE INCOME TAX—POWER TO TAX INCOME OF NON-RESIDENT.—A statute of Oklahoma laid a tax on the total income of residents from whatever source derived, and taxed that part of the income of non-residents which was derived from property situated within the state. Unpaid taxes were to become a lien on the property of the taxpayer. The exemptions for married persons, etc., were the same for non-residents as for residents. The plaintiff, a non-resident whose income from oil lands within the state was $1,500,000 yearly, claimed that the imposition of the tax was in violation of the 'due process' and 'equal protection' clauses of the Federal Constitution. *Held,* the act was a valid exercise of the state's taxing powers. The fact that a citizen of one state has a right to hold property or carry on an occupation or business in another state is a very reasonable ground for